IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 33 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF GIFT TAX

Versus

BHARATIDEVI SARABHAI

Appearance:

MR BB NAYAK FOR MR MANISH R BHATT for Applicant.

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 24/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference ten questions are referred for our opinion, out of which one question is referred at the instance of the revenue and nine other questions are referred at the instance of the assessee:

2 At the instance of the revenue :

(1) "Whether, the Appellate Tribunal has been right in law in holding that the Gift-tax Officer was not justified in levying gift-tax on the value of the entire corpus since it is only the value of the interest in the property which was transferred and was required to be considered for the purpose of the gift-tax ?

Mr.B.B.Nayak, learned Counsel for the revenue points out that the controversy raised at the instance of the revenue is already concluded in favour of the assessee in Gift Tax Reference No.2 of 1986 decided on 04.09.2001. 0In view of this, we hold that the Income Tax Tribunal was right in holding that the Gift Tax Officer was not justified in levying gift-tax on the value of the entire corpus since it was actually assessee's interest in the property which was transferred. Accordingly, we answer question No.1 in the affirmative i.e. in favour of the assessee and against the revenue.

3 At the instance of the assessee :

(4) "Whether, on the facts and in circumstances of the case the exercise of the power of appointment by the assessee was a transfer of property under sec.2(xxiv)(c) of the Gift-tax under the Gift-tax Act?

(5) Whether, the Tribunal was right in law in holding that for the purpose of Sec.2(xxiv)(c) it is not the scope of the power but its exercise which is relevant and therefore the exercise of Power of appointment by itself by the assessee was a transfer under clause (c) of sub-sec.2(xxiv) ?

(6) If the answer to question No.3 is in the affirmative, is the assessee who is not the owner of the property but merrely exercises the power

of appointment during the assessment year thereby naming the person to who the Trustee of original Trust should transfer the property at a future date,liable to Gift-tax in this assessment year?

(7) If the answer to question 6 is in the affirmative, then does the 'transfer' of property take place by the assessee in the assessment year in which the power of appointment is exercised or the assessment year in which the power of appointment was to become effective, on account of action of altogether other persons viz.Trustees of original Trust acting on their rights ?

(8) Assuming that exercise of power of appointment is a 'transfer of property' within the meaning of Sec.2(xxiv) (c) of the Act, whether the Tribunal was justified in law in making the assessee liable to gift-tax even when other essential pre-requisites of 'gift' viz.acceptance of gift by donee, etc.(appointee trust) are not satisfied on 31/3/1976, the date when the power of appointment was exercised ?

(9) Whether, the expression 'in such manner' in clause 1(iii) of the Trust Deed cannot cover the authority of the Trustees of original Trusts to transfer the corpus to the assessee as a beneficiary in the manner they did and therefore can it be said that it is a transfer to persons other than the beneficiary of trust, if no, can it not be said that there has been a direct transfer by the Trustees of original Trust to new Appointment Trusts in respect of which no tax is leviable as tax was already paid by the Settlor at the time of first transfer, which otherwise will tant amount to double taxation.

(10) Whether, the Tribunal exceeded its power and jurisdiction in observing that for the balance which makes the totality of the corpus the valuation has to be done separately ?

(11) If the answer to the above question No.10 is in the affirmative, whether, on the facts and circumstances of the case, the Tribunal's order can be said to be reasonable in as much as it has taken into consideration irrelevant matters and has ignored the relevant materials on record while observing regarding balance of corpus and

its taxability referred to hereinabove ?"

4 Coming to the questions referred at the instance of the assessee, learned Counsel for the revenue points out that the controversy raised in question Nos. 4 to 9 herein is the same controversy which was also referred in Gift Tax Reference No.2 of 1986. The same controversy has been concluded in favour of the revenue and against the assessee. Accordingly, our answer to question Nos. 4 to 9 is in the affirmative i.e. in favour of the revenue and against the assessee.

5 Coming to question Nos. 10 and 11 referred at the instance of the assessee, we decline to answer the said questions as they are merely argumentative and are already covered by the previous questions.

6 The Reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah, J) (D.A.Mehta,J)

m.m.bhatt